

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Varsheen Antuan Smith,

Plaintiff,

v.

Hunter Swanson, *et al.*,

Defendants.

Civil Action No. 9:18-251-RMG

ORDER AND OPINION

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DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

This matter is before the Court on the Report and Recommendation of the Magistrate Judge, recommending this action be summarily dismissed. At the time the Report and Recommendation issued, Plaintiff was a convicted inmate at the Beaufort County Detention Center, awaiting sentencing for convictions for kidnapping and other offenses. He has since been sentenced to 25 years imprisonment and transferred to the Kirkland Correctional Institution. Charges for accessory after the fact to murder are still pending.

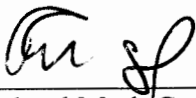
Plaintiff filed the present action under 42 U.S.C. § 1983 on January 29, 2018 (after his conviction). He names as defendants Solicitor Hunter Swanson, Master Sergeant George T. Erdel of the Beaufort Police Department, and Judge Carmen T. Mullen. He claims that the Solicitor violated his speedy trial rights, that the Judge erred when granting an extension, and that Master Sergeant Erdel lied under oath at a preliminary hearing. Plaintiff seeks vacatur of his conviction and \$1,000,000 in damages.

The Court fully agrees with the Magistrate Judge's recommendation that this action be summarily dismissed. All Defendants have absolute immunity from suit—the Judge has absolute judicial immunity, the Solicitor has absolute prosecutorial immunity, and Mr. Erdel has absolute witness immunity. Moreover, Plaintiff may not challenge his conviction in a § 1983 action. *Heck*

v. Humphrey, 512 U.S. 477, 486–87 (1994). The Court, however, declines to adopt the Report and Recommendation insofar as it recommends dismissal without prejudice. Claims against absolutely immune defendants are properly dismissed with prejudice. *See Ostrzenski v. Seigel*, 177 F.3d 245, 253 (4th Cir. 1999).

For the foregoing reasons, the Court **ADOPTS IN PART AND DECLINES TO ADOPT IN PART** the Report and Recommendation of the Magistrate Judge (Dkt. No. 9). The Court **DECLINES TO ADOPT** the Report and Recommendation insofar as it recommends dismissal without prejudice. The Court otherwise **ADOPTS** the Report and Recommendation. The complaint is **DISMISSED WITH PREJUDICE**. This dismissal counts as a “strike” under 28 U.S.C. § 1915(g). The Clerk is directed to update Plaintiff’s mailing address to Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

March 6, 2018
Charleston, South Carolina